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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1970

70-5025

~~No. 5940~~

FRANCIS HAINES,

Petitioner,

—v.—

OTTO J. KERNER, FORMER GOVERNOR, STATE OF ILLINOIS, ET AL.

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1970
CERTIORARI GRANTED MARCH 8, 1971

Supreme Court of the United States

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

CV 68-83-D

Jury demand date: July 1, 1968

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, Former Governor, State of Illinois, Chicago, Illinois; ROSS V. RANDOLPH, Director of Public Safety, State of Illinois, Springfield, Illinois; MAX P. FRYE, Warden; LEWIS C. LENCE, Assistant Warden; JEFFIE BIGGS, Assistant Warden; PAUL V. SYMPSON, Senior Guard Captain; RUSSELL LENCE, Guard Captain; E. ROGERS, Guard Lieutenant; DONALD GENTSCH, Record Clerk; WILLIAM SHEETS, Commissary Officer; PAUL T. DUNCAN, Guard, all of the Illinois State Penitentiary, Menard, Illinois, 62259, DEFENDANTS

For Plaintiff:

Francis Haines, Pro Se, Register No. 16348, Illinois State Penitentiary, Menard, Ill. 62259

For Defendants:

Jeffie Biggs, Paul V. Sympson, & Russell Lence, Otto J. Kerner, Ross V. Randolph, Max P, Frye, Lewis Lence, E. Rogers, Donald Gentsch, William Sheets and Paul Duncan: John Sorrentino, Asst. Atty. Gen., William G. Clark, Atty. Gen., State of Illinois, 160 N. LaSalle St., Chicago, Illinois 60601

Statistical Record	Costs	Date
J.S. 5 mailed July, 1968	Clerk Forma Pauperis	2/13/69
J.S. 6 mailed	Marshal	
Basis of Action: Civil Rights-T.42, USC, Secs. 1981, 1983 & 1985.	Docket fee	
	Witness fees	
Action arose at: Menard, Ill.	Depositions	

Name or Receipt No.	Rec.	Disb.	
F. Haines Notice Appeal	5.00	5.00	GS 2411 CD# 29D 2/17/69

Date	Proceedings
1968	
June 11	Petition to file civil complaint in forma pauperis received and handed to the Court for consideration.
July 1	Motion for Leave to File and Prosecute in Forma Pauperis and Other Relief, filed.
July 1	Order Granting Motion for Leave to File and Prosecute in Forma Pauperis, entered. (WISE, J) Certified copies to Francis Haines, Atty. General William Clark.
July 1	Complaint filed.
July 1	Motion for Appointment of Guardian Ad Litem filed.
July 1	Summons issued and mailed for service, together with copy of Order showing case filed in forma pauperis.
July 10	Marshal's return of service made on July 3, 1968 filed. (Service not made on defendants Kerner and Randolph)
July 15	Marshal's return of service on defendant Otto J. Kerner, same served 7/8/68.

Date	Proceedings
1968	
July 23	Motion to Dismiss and Supporting Memorandum, on behalf of Defendants Otto J. Kerner, Ross V. Randolph, Max P. Frye, Lewis Lence, E. Rogers, Donald Gentsch, William Sheets and Paul Duncan, filed.
Aug. 2	Motion for Leave to Proceed on Used Paper, filed.
Aug. 2	Notice and Proof of Service of filing answering brief, filed.
Aug. 2	Answering Brief on Motion to Dismiss, filed.
Aug. 2	Notice and Proof of Service of Ancillary Petition for Writ of Injunction, filed.
Aug. 2	"Motion for Leave to File and Prosecute Ancillary Petition for Injunction in Forma Pauperis and Upon Used Paper Such as This" filed, with forma pauperis affidavit.
Aug. 2	Copies of all above pleadings received and forwarded to Attorney General William G. Clark, Springfield, Ill.
Sept. 6	Marshal's return on service of summons, service made on Ross V. Randolph, Director of Public Safety, State of Ill.; on 9/4/68.
Oct. 25	Notice and Proof of Service filed.
Oct. 25	Motion for Default Judgment Against Named Defendants, with Affidavit & Memo., filed. Defts. named in Motion are Jeffie Biggs, Paul Sympson & Russell Lence.
Oct. 25	Copies of above Notice, Motion, Affidavit and Memo. received and forwarded to Attorney General William G. Clark.
Nov. 8	Motion to Amend Motion to Dismiss filed. Motion to Dismiss should also be the motion of defendants Biggs, Sympson and Lence.

Date	Proceedings
1968	
Nov. 8	Order Denying Motion for Default and Allowing Motion to Amend to Dismiss, entered. (WISE, J.) IT IS HEREBY ORDERED that the motion for default be, and is hereby denied; IT IS HEREBY FURTHER ORDERED that the motion to amend motion to dismiss be, and is hereby, allowed; IT IS HEREBY FURTHER ORDERED that the plaintiff is granted an addiitonal 20 days to file any additional or supplemental brief to the motion to dismiss, and the defendants are to answer said brief within 20 days after the filing of any supplemental brief. Certified copies to plaintiff and to William G. Clark, Atty. General of Ill.
Nov. 15	Notice, Proof of Service, and Motion for Leave to File Interrogatories Against Certain named Defendants pursuant to Rule 33, Federal Rules of Civil Procedure, and Motion for Leave to File Admissions against Certain Named Defendants, pursuant to Rule 36, Federal Rules of Civil Procedure, with affidavit attached, filed.
Nov. 15	Copy of Notice, Proof of Service, and above motions and affidavit mailed to Wm. G. Clark, Attorney General of the State of Illinois
Nov. 20	Motion for Leave to Proceed on Used Papers and affidavit, filed.
Nov. 20	Supplemental Brief in Opposition to the Motion to Dismiss, filed.
Nov. 20	Notice and Proof of Service of Motion, Affidavit and Supplemental Brief, filed.
Nov. 20	Mailed copies of Notice and Proof of Service, Motion and Affidavit, and Supplemental Brief, to Wm. G. Clark, Attorney General of the State of Illinois

Date	Proceedings
1968	
Nov. 21	Request for Admissions under Rule 36, Federal Rules of Civil Procedure and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant Ross V. Randolph, filed.
Nov. 21	Request for Admissions pursuant to Rule 36, Federal Rules of Civil Procedure and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant Max P. Frye, filed.
Nov. 21	Request for Admissions Pursuant to Rule 36, Federal Rules of Civil Procedure, and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant Russell Lence, filed.
Nov. 21	Request for Admissions pursuant to Rule 36, Federal Rules of Civil Procedure, and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant William Sheets, filed.
Nov. 21	Request for Admissions pursuant to Rule 36, Federal Rules of Civil Procedure and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant Donald Gentsch, filed.
Dec. 9	Motion for Leave to Present Slip Opinion in Wright v. McMann, No. 31023 . . . . and Short Discussion of Pertinent Provisions Thereof, filed, with Notice and Proof of Service.
Dec. 9	Affidavit in Support of Motion, filed. Copy of Motion and Affidavit and Notice sent to Atty. General William G. Clark, at Chicago, Illinois.
Dec. 20	Order entered December 19, 1968, allowing Motion to Dismiss and dismissing cause of action (WISE, J) Copies to Plaintiff and to Attorney General, Chicago, Ill. JS #6 issued.

Date	Proceedings
1969	
1/ 7/69	Notice and Proof of Service, Motion to Reconsider and Set Aside the Order of the Court, entered December 19, 1968, Dismissing the Complaint Upon Allowance of Defendants Motion to Dismiss, filed. Copy mailed to Attorney General, Chicago, Ill.
1/ 8/69	Order Denying Motion for Rehearing entered—Ordered that the motion for reconsideration and setting aside of order dismissing complaint entered Dec. 20, 1968 is denied (Wise, J.) Copies mailed to Mr. Haines and Attorney General, Chicago, Ill.
1/31/69	Motion for Leave to File and Prosecute Appeal in Forma Pauperis, Pursuant to Title 28, USC, Sec. 1915(a) and Rule 75(a), FECP, with Affidavit in Forma Pauperis in Support of Motion for Allowance of Appeal in Forma Pauperis, filed and handed to the Court for consideration, with Notice and Proof of Service, Directions to the Clerk for Service of Notice of Appeal, Notice of Appeal, and Praecipe for Transcript of Record on Appeal attached thereto.
2/ 4/69	Order Denying Leave to Appeal in Forma Pauperis, entered. (WISE, J) Certified copies to Mr. Haines and to Attorney General of State of Illinois.
2/13/69	Notice of Appeal filed.
2/13/69	Praecipe for Transcript of Record on Appeal filed.
2/13/69	Directions to the Clerk for Service of Notice of Appeal filed.
2/13/69	Notice and Proof of Service, sent by Plaintiff Frances Haines, filed.
2/13/69	Clerk's Certificate of Mailing Notice of Appeal, filed.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS.

Civil Action No. CV68-83D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF.

vs.

OTTO J. KERNER, Former Governor, State of Illinois, Chicago, Illinois; ROSS V. RANDOLPH, Director of Public Safety, State of Illinois, Springfield, Illinois; MAX P. FRYE, Warden; LEWIS C. LENCE, Assistant Warden; JEFFIE BIGGS, Assistant Warden; PAUL V. SYMPSON, Senior Guard Captain; RUSSELL LENCE, Guard Captain; E. ROGERS, Guard Lieutenant; DONALD GENTSCH, Record Clerk; WILLIAM SHEETS, Commissary Officer; PAUL T. DUNCAN, Guard, all of the Illinois State Penitentiary, Menard, Illinois, 62259, DEFENDANTS

COMPLAINT—filed July 1, 1968

(Trial by Jury Demanded of All Issues so Triable)

Francis Haines, complaining of the defendants states:

The action arises under the Constitution and Laws of the United States, and in particular as follows: United States Constitution, Eighth and Fourteenth Amendments, thereto; United States Code, Title 42, Sections 1981, 1983 and 1985(2); and the decisions of the United States Supreme Court in construing them.

The Jurisdiction of this Court is specifically invoked as follows:

A— To recover damages for the deprivation, under color of State Law, of rights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, under the guise of regulation, cus-

tom or usage, pursuant to Title 28 U. S. C. Section 1343 (3) and Title 42 U. S. C. Section 1983.

B— To recover damages for the deprivation, by reason of a conspiracy, of rights, privileges and immunities, guaranteed and secured by the Constitution and Laws of the United States, pursuant to Title 28 U. S. C. Section 1343(1) and Title 42 U. S. C. Section 1985(2)

C— Absent diversity of citizenship and jurisdictional amount, pursuant to:

Hague v. C. I. O., 307 U. S. 496;
Douglas v. Jeanette, 319 U. S. 157.

D— To inquire into prison rules and the internal discipline of the Illinois State Penitentiary, Menard, Illinois.

Cooper v. Pate, 378 U. S. 546;
Cooper v. Pate, (CCA 7) 382 F. 2nd 519;
Wright v. McCann, (CCA 2) #31023, F. 2nd.
Gordon v. Garrson, (E. D. Ill.) 77 Fed. Supp. 477;
Application of Middlebrooks, (D.C. Cal.) 88 Fed. Supp. 943;
Cf. United States v. Jones, (CCA 5) 207 F. 2nd. 785.

E— Of the defendants residing without the Eastern District of Illinois, Title 28 U. S. C. Section 1393(2)

F— For a declaration of the rights privileges and immunities of the plaintiff, Title 28 U. S. C. Section 2201.

The cause of action has arisen in the past two years.

Plaintiff is a natural born citizen of these United States, born at Blairstown, Iowa, June 1, 1902; and has served in the United States Army as such, Army Serial Number 721, 839; and is now confined in the Illinois State Penitentiary, Menard, Illinois, as No. 16348.

The defendants are officers and employees of the State of Illinois, respectfully as follows:

A— The defendant Kerner, between the dates of March 10 and May 19, 1968, was duly elected Governor of the State of Illinois.

B— The defendant Randolph is the duly appointed Director of Public Safety of the State of Illinois.

C— The defendants Frye, Lewis C. Lence, Jeffie Biggs, Paul V. Sympson, Russell Lence, E. Rogers, Donald Gentsch, William Sheets, and Paul T. Duncan, are employees of the Department of Public Safety of the State of Illinois and in the capacities set forth in the title hereof.

D— The defendants Max P. Frye, Lewis C. Lence, Jeffie Biggs, Paul V. Sympson and Donald Gentsch, are members of the Progressive Merit System of the Illinois State Penitentiary, Menard, Illinois, and in full charge of the application thereof.

At all times hereinafter complained of the defendants were acting in their official capacities, and under color of state law, regulation, custom or usage, and by virtue of their official positions, deprived the plaintiff of his rights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, and the decisions of the United States Supreme Court in construing them.

That at divers times subsequent to and including March 10, 1968, the defendants herein conspired, each with the others or adopted the acts of the others, for the purpose of impeding, hindering, obstructing and defeating the due course of Justice in the State of Illinois, with intent to deny the plaintiff of his rights, to be treated in accordance with due process of law and to deny him the equal protection of the law, that the acts set forth hereinafter, in accordance with the said conspiracy, were willful and malicious, and designed to discriminate against the plaintiff and deprive him of his rights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, and in particular as follows:

A— To be free from Cruel and Unusual Punishments as secured by the Eighth Amendment, and Section 1, Fourteenth Amendment, United States Constitution.

B— To Due Process of Law as secured by the Constitution of the United States, Section 1, Fourteenth Amendment.

C— To Equal Protection of the Laws as secured by the Constitution of the United States, Section 1, Fourteenth Amendment.

D— To the full and equal benefits of all laws and proceedings for the security of persons as guaranteed and secured by Title 42 U. S. C. Section 1981.

E— To be free from deprivation, under color of state law, regulation, custom or usage, of fights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, Title 42 U. S. C. Section 1983.

F— To be free from deprivation, by reason of any conspiracy, or rights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, and in particular the right to the due course of Justice in the State of Illinois, Title 42 U. S. C. Section 1985(2).

C— The right to be tried by due process of law, and if found guilty, to be sentenced and punished in accordance with the Laws of the State of Illinois, Screws v. United States, 325 U. S. 91; Williams v. United States, 341 U. S. 97.

The Constitution of the State of Illinois, (1870) Article II, guarantees the following as being within the due course of Justice in the State of Illinois.

"2. No person shall be deprived of life, liberty or property without due process of law.

"3. The right to trial by jury as heretofore enjoyed, shall remain inviolate.

"8. No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases where the punishment is by fine, or imprisonment otherwise than in the penitentiary.

"9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation; to have a copy thereof; and to have

process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

"10. No person shall be compelled in any criminal case to give evidence against himself, or to be put in jeopardy twice for the same offense."

The said constitutional provisions in Illinois are supplemented by the provisions of the Illinois Revised Statutes, 1967, Criminal Law and Procedure, Chapter 38, Division III, Title I to VII, pages 1590 to 1613, governing trial procedures in criminal cases.

The Illinois Revised Statutes, 1967, Chapter 38, Division II, Article 12.1 Sections 2 to 6, defines the crime of Assault and Battery and sets the legal penalties therefore.

The Illinois Revised Statutes, 1967, Chapter 38, Division I, Article 25-1, Sections 25-1(3) states that an assembly of two or more persons without authority of the law, for the purpose of exercising correctional powers over any supposed violation of the law, constitutes mob action and is a misdemeanor.

By the Act of June 29, 1885, it was provided that the several Courts of Will County, Illinois, had cognizance of all crimes committed in the Illinois Penitentiary. Such act was prior to Menard, but subsequently the Illinois Revised Statutes, 1949, Chapter 108, Paragraph 108, gave cognizance to courts in other counties in which contained penitentiaries.

The Legislative History of the use of Solitary Confinement in Illinois as a means of penal discipline is as follows:

A— Act of January 6, 1827:

"Sec. 13: The said Warden, and other officers, agents, and servants, shall each of them have power to order any convict to solitary confinement, for misbehavior, refractory conduct, idleness, negligence, in performing their daily task, impertieent or improper language, or breach of any of the rules and regulations; and shall immediately report the same to the arden,

and the Warden shall punish such convict therefore, by solitary confinement, for any term not exceeding thirty days ,or many discharge the said convict from the imprisonment ordered by the said Warden, officer, agent or servants."

B— By an Act of 1867, Sessions Laws, page 31, Illinois Statutes 1868, Section 37, Chapter 81, it was provided in the event that unusual punishment was to be inflicted it should be solitary confinement. Such reads:

"It shall not be lawful in said penitentiary to punish any convict by whipping in any case whatsoever, if, in the opinion of the Warden, it shall be deemed necessary in that case to inflict unusual punishment in order to produce the entire obedience and submission of any convict, said Warden shall have power to punish said convict by solitary confinement in a dark cell and deprivation of food except bread and water until such convict shall be reduced to submission and obedience."

C— By the Act of July 1, 1871, Illinois Revised Statutes, 1925, Chapter 108, Section 37, it was provided:

"37. It shall not be lawful in said penitentiary to use any cruel or unusual mode of punishment or to punish any convict by whipping whatsoever."

By the provisions of the Illinois Revised Statutes, 1949, Chapter 108, Paragraphs 76 to 79, to prison doctor was required to examine all convicts regarding their physical condition and regarding their ability to work and to classify them into three classes or grades, first, second and third, nothing being said therein regarding disciplinary powers.

The current Illinois Revised Statutes, 1967, Chapter 108 paragraphs 76 to 79, also provide for classification into three classes or grades, first, second and third.

On or about April 2, 1968, the defendant Gentach looked at such above provisions and slammed the book shut before plaintiff.

The defendants Frye, Lewis C. Lance, Jeffie Biggs, Paul V. Sypmpson and Donald Gentsch, comprise the

Membership of the Progressive Merit System Board of the Illinois State Penitentiary, Menard, Illinois, and all that is contained in the current Rule Book pertaining to such is as follows: (Good Time table omitted.)

"PROGRESSIVE MERIT SYSTEM.

"A 'Progressive Merit System' for the purpose of encouraging and rewarding good conduct and industry in the Division of the Illinois State Penitentiary has been adopted by the Department of Public Safety.

"Under this system prisoners serving indeterminate sentences who are denied parole and their cases continued to future dates for further consideration may by good conduct and industry earn 'Merit Time' and thus advance the dates of review of their cases.

"In the event you receive a demotion you will lose a portion or all of your merit time earned towards a dated set.

"Merit Time is applied only to those continuances handed down by the Parole Board specifying a certain date. You cannot earn merit time on an undated continuance.

PROMOTIONS.

"In the penitentiary there is a grade system consisting of three grades. These grades are "A" "B" and "C".

"On admission the inmate is placed in Grade "A" and while in Grade "A" may earn merit time. If an Inmate's behavior is unsatisfactory he may be demoted to Grade "C" which will result in a loss of privileges for a period of one year and cannot earn merit time while in Grade "C". In the event of demotion you must spend one year in "C" Grade, you are promoted to "B" Grade where you remain for one year before going to "A" Grade. No merit time can be earned in Grade "C". You may earn five

days per month in "B" Grade and ten days per month in "A" Grade.

"In the event an inmate receives a dated continuance from the Parole Board his next board date will be computed according to the following chart.'"

The facts of which plaintiff complains are as follows:

On March 10, 1968, plaintiff and two other inmates, Moore No. 30925 and Doherty No. 33371, were assigned to what is known in Menard, as the Inside Yard Gang. The defendant Paul T. Duncan was officer in charge of such assignment.

Plaintiff and these other two inmates engaged in an argument in which it seemed to plaintiff that Inmate Moore was urging and inciting inmate Doherty against plaintiff. Several times it was said by both of these inmates that the "Young Blood" was taking over and that the "Old Blood like the plaintiff was done. Both of these men are approximately thirty years of age.

Plaintiff is sixty-six (66) years of age his next birthday and is approximately thirty (30) percent permanently disabled due to the following foot injuries: Left foot—2nd. 3rd and 4th Cuboid Bones and 3rd Metatarsal fractured, which resulted in an Ankylosis in the Cuboid Bones. Right foot—vertical fractures in the heel bones, discernable only by an X-Ray in a specific position of the foot. He was awarded compensation in a hearing before the Illinois Industrial Commission for these injuries.

After this argument had proceeded for a time plaintiff obtained an Inmate Pass from the Defendant Duncan to go and inspect a pile of cinders to see if it had thawed sufficiently or whether a pick was needed to breaking and loading on a truck. He also took a No. 2 long handled shovel.

He inspected the pile of cinders and found it needed a pick and returned to the Yard Gang Shack. Upon his return he inspected the shovel and found it had a clod of dirt in the heel. Immediately outside the door he banged the shovel on the concrete and dislodged this dirt.

When he entered the Yard Gang Shack Doherty and Moore resumed this argument and during this period Moore was very emphatic that the "Young Blood" such as him were taking over and that the plaintiff had better watch out or he would be hurt. Plaintiff told both of these men that they could hop on at any time they felt like it and he had never run and did not intend to start then. At this time the plaintiff was in the Yard Gang Showers, which is about Fifteen (15) Feet long and four (4) feet wide, with a concrete block wall on one side of it about three (3) feet high.

After plaintiff entered the bath room these other inmates approached him in a threatening manner and resumed the argument. One of the two men asked him if he wanted to start something, plaintiff thinks it was Doherty. He then hit Doherty on the head with the shovel, inflicting cuts on his head.

When plaintiff hit Doherty Moore grabbed the shovel and threw it out from the bath room and then plaintiff and Moore had a scuffle. At this time defendant Duncan became aware of the trouble. He had been in the office, about fifteen (15) feet away and called out. This Moore broke off the scuffle and said what is the matter with you old man.

Defendant Duncan took Doherty into the back room to wash the blood from Doherty's head and during the periods of his absence Moore kept making dire and foreboding threats of the consequences of plaintiffs acts. He was told that he could resume the matter any time he choose.

Inmate Orlando, No. 34527, witnessed these eevnts subsequent to plaintiff's hitting the shovel on the concrete.

Subsequently the defendant Rogers came and walked plaintiff to what is known in the institutional vernacular as the hole or solitary confinement, which in recent years the officials call isolation.

Defendant Rogers took plaintiff before the defendant Russell Lence who was disciplinary officer that day. Plaintiff refused to explaine his actions other than to say he had hit Doherty with the shovel. He was locked

in an Isolation Cell until a report could be had from defendant Duncan.

When this report was had defendants Lence and Rogers called plaintiff before them again and read the report to him. Plaintiff objected to statements of Duncan that he had hit the shovel on the Yard Gang Shack floor and refused to discuss statement of Duncan that he had engaged with the other two men. Defendant Lence wanted to know why the plaintiff would hit Doherty and stated that it had been twenty-eight (28) years since plaintiff had been in the hole. When plaintiff refused to talk to these officers he was given fifteen (15) days punishment, from March 10, to March 25, 1968.

This isolation, hole or solitary confinement consists of dark cells and the only difference plaintiff could see in the intervening twenty-eight (28) years between his trips to such were as follows: he was given three (3) blankets instead of two (") to sleep on a concrete floor; there had been a toliet installed instead of toilet buckets formerly used; that he received (2) slices of bread every morning and evening, along with a noon meal, instead of the four (4) slices of bread formerly received.

There was no articles of hygiene furnished him and his false teeth became so rancid he had to leave them out. No towel or soap was furnished.

On March 25, 1968, plaintiff was taken from the hole and taken to the cell house to pack up to move. He then received a grade demotion slip which stated he had been demoted to "C" Grade, which was dated March 12, 1968 for his violation of the rules. No hearing before the Progressive Merit Board was held.

On March 27, 1968, plaintiff went to the inmates Commissary to get needed articles and was told by inmate Bond, No. 32163, that he could not trade because he was in "C" Grade, that he had traded on March 6, 1968. When plaintiff said he would take the matter to the courts he was laughed at and told to go ahead.

This inmate Bond is the defendant Sheets so-called right hand man and he places inmates Balances on their Commissary Slips although the rules, Rule 5, Commissary Rules, states in part as follows:

"You will file past to Commissary Officer with your order in your hand, and after he has placed your balance on same, put your prints on the order in two places. * * *"

This is all the notification that plaintiff has received from any officials that he had lost his privileges and to date the priveleges lost are not known to him.

Plaintiff later wrote a letter of complaint to the defendant Lewis C. Lence, stating that he had a definite sentence of life, that according to the Progressive Merit System such only applied to indeterminate sentences; that he could not earn any good time or merit time thereunder and that he though he should not be punished under a system which contained no benefits for him.

Several days later, on or about April 2, 1968, defendant Gentsch called plaintiff to his office in regards to the letter to Defendant Lence. At this time plaintiff again objected to the application of the Merit System Rules against him, stating that he had served twenty-eight (28) and when they gave him good time for such period he would accept "C" Grade.

Defendant Gentsch pulled out a Ledger Book, fourteen (14) inches long, eight and a half (8½) inches wide and about three and a half (3½) inches thick, and opened it to a rule which he read and which stated any inmate could be put in "C" Grade. This rule is not in the inmates rule book.

Plaintiff objected that the provisions of the Illinois Revised Statutes, Chapter 108, Paragraphs 76 to 79 which required classification into three classes or grades. First, Second and Third. The defendant opened a statute to such sections to such law and plaintiff called his attention to such. He closed the book before plaintiff could read the context.

Plaintiff said he would take the matter to the courts and defendant Gentsch humorously told him to do so.

Plaintiff has never been officially told by any officials of the Illinois State Penitentiary, Menard, Illinois, of the privelegs he was to be deprived of by his demotion to "C" Grade other than that by inmate Bond and there is nothing in the Rule Book concerning such.

Within the past two (2) years four inmates of the Illinois State Penitentiary, Menard, Illinois, have been tried for murder committed in the Inmates Dining Room, indicted in Randolph County and trial held in Sangamon County, Illinois; at least one (1) inmate was tried in Randolph County for a Prison Escape; and each of the said defendants have full knowledge of such trials.

The plaintiff has been deprived of his right to trial by the due course of Justice in the State of Illinois, which requires in part; notice and cause of the accusation; trial before a court of competent jurisdiction; right to aid of counsel; trial before an impartial jury; a sentence according to the laws of the State of Illinois; the right to make a defense against the charge; the right of an appeal if he so desires; and the acts of the defendants were under the color of state law, regulation, custom and usage and were in concert for the end and purpose of discriminating against him and to coerce him with punishments not permitted by the Laws of the State of Illinois.

The plaintiff has been punished with the imposition of Cruel and Unusual Punishment not permitted by the Laws of Illinois by the said defendants acting under color of state law, custom, regulation or usage, and such acts were in concert for the end and purpose of discriminating against him.

The plaintiff has been arbitrarily classified by imposition of the so-called Progressive Merit System, under which he can receive no benefits, and which is not listed in any of the Penal Provisions contained in the Laws of Illinois as a punishment for crime, and that the acts of the said defendants were under color of state law, custom, regulation and usage, and such acts were in concert for the end and purpose of depriving him of due process and equal protection of the laws.

The plaintiff suffered great physical anguish and pain due to his feet and circulatory trouble in his legs due to being forced to sleep on the concrete floor.

The defendant Randolph, as Director of Public Safety of the State of Illinois, has full and complete authority over all defendants excepting Kerner, and makes the

rules and regulations pertaining to the Illinois State Penitentiary, under which the above acts took place.

The defendant Kerner, as Chief Executive Officer of the State of Illinois, was superior to all other defendants and could have cured all defects in their actions by executive order.

WHEREFORE THE PLAINTIFF DEMANDS,

A) Damages to the sum of Two Hundred and Fifty Thousand ($250,000.00) Dollars as punitive and exemplary damages for the deprivation of plaintiff's rights under color of state law, regulation, custom and usage.

B) Damages to the sum of Two Hundred and Fifty Thousand ($250,000.00) Dollars as punitive and exemplary damages for the deprivation of plaintiff's rights by means of a conspiracy.

C) A Declaration of the Rights, Privileges and Immunities of Plaintiff in the circumstances.

D) Such other and further relief as Justice and Equity may require in the premises.

Respectfully submitted

/s/ Frances Haines
Plaintiff
Reg. No. 16348
Box 711
Menard, Illinois

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV-68-83D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION TO DISMISS AND SUPPORTING MEMORANDUM—
Filed July 23, 1968

Now come the defendants, OTTO J. KERNER, former Governor of Illinois; ROSS V. RANDOLPH, Director of Public Safety of Illinois; MAX P. FRYE, Warden, Menard Penitentiary; LEWIS LENCE; E. ROGERS; DONALD GENTSCH; WILLIAM SHEETS; and PAUL DUNCAN, prison officials and employees, by their attorney WILLIAM G. CLARK, Attorney General of the State of Illinois, and respectfully move this Honorable Court to dismiss the above-entitled cause, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a cause of action upon which relief can be granted.

In support of the above motion, defendants respectfully submit the following memorandum of law.

Plaintiff, an inmate of the Illinois State Penitentiary, Menard Branch, brings this action under 42 U.S.C. sections 1981, 1983, and 1985(2), all being sections of the Federal Civil Rights Act, invoking the Court's jurisdiction, pursuant to 28 U.S.C. § 1343(3). Among such other relief as justice may require, he seeks punitive and exemplary damages in the sum of FIVE HUNDRED-THOUSAND DOLLARS ($500,000.00) from the named defendants.

In his rather verbose and obtuse complaint, plaintiff alleges that he has been arbitrarily classified into "C. Grade" under the Progressive Merit System, a system from which he contends he receives no benefits and should

not therefore be subject to its provisions. However, plaintiff totally misapprehends what has occurred, and therefore his purported issues are misleading. Pursuant to its rule making authority [1967 Ill. Rev. Stat., Ch. 108, § 10], the Department of Public Safety has prescribed that all prisoners shall be divided into three grades ("A", "B" & "C"). Upon admission an inmate is placed in "A" grade, and "[i]f an inmate's behavior is unsatisfactory, he may be demoted to Grade "C", which will result in a loss of privileges for a period of one year and cannot earn merit time while in Grade "C". [Petition p. 6]. This system pertains to *all* prisoners, whether they are serving a determinate sentence or an indeterminate sentence. If the latter is true, then a prisoner who is demoted to Grade "C" loses his privileges *and* his right to earn merit time. If a prisoner is serving a determinate sentence, he loses only his privileges.[1] The question then is whether the operation of this rule has deprived plaintiff of any constitutional rights. The complaint shows that the plaintiff struck another prisoner on the head with a shovel; that he was twice asked to explain the incident; that he had both times refused to explain his action; that he was punished by demotion to Grade "C", with the corresponding loss of privileges. (Complaint, pp. 7, 8, 9)

The complaint is thusly intimately concerned with internal prison administration. The law is well settled that except under "exceptional circumstances," internal matters such as the conduct of a prison, the enforcement of its rules and regulations, its discipline, and the proper exercise of its discretionary powers, are the sole concern of the States, and the federal courts will not inquire concerning them. *Walker* v. *Pate*, 356 F.2d 502 (7th Cir. 1966), *cert. denied*, 384 U.S. 966 (1966); *Knight* v. *Ragen*, 337 F.2d 425 (7th Cir. 1963), *cert. denied*, 380 U.S. 985 (1965); *Childs* v. *Pegelow*, 321 F.2d 487, 489 (4th Cir. 1963). In view of the clear violation by plaintiff of a legitimate prison rule and regulation, together with the attendant reasonable disciplinary pun-

[1] The respondent is informed that a prisoner so demoted loses his right to go to the movie and also his commissary rights.

ishment, the facts presented do not rise to the exceptional circumstances which are required for a federal Civil Rights suit. Moreover, the acts of prison officials, who being vested with wide discretion in safekeeping and securing prisoners committed to their custody and charged with the right and duty to maintain discipline among inmates, should be upheld if reasonably necessary to effectuate the purposes of imprisonment. *Kelly* v. *Dowd*, 140 F.2d 81 (7th Cir. 1944). Therefore, plaintiff has failed to demonstrate that the defendants, while acting under color of state law or in conspiracy with each other, deprived or abridged his federally protected rights, privileges, or immunities as required by 42 U.S.C. § 1983 and § 1985(2), and hence the complaint should be dismissed.

Parenthetically, it is noteworthy that there is a total absence of any specific allegation that the defendants KERNER, RANDOLPH and FRYE personally participated either individually or in conspiracy with the others, except by the allegation that their respective offices as Governor, Director of the Department of Public Safety, and Warden gave them the authority and responsibility to supervise and correct the alleged wrongful acts of their subordinates. Plaintiff is relying upon the doctrine of respondeat superior, a doctrine which is totally inapplicable as a grounds for recovery under the Civil Rights Act. *Jordon* v. *Kelly*, 233 F. Supp. 731, 739 (W. D. Mo. 1963); *Runnells* v. *Parker*, 263 F. Supp. 271, 274 (C.D. Cal. 1967).

WHEREFORE, defendants respectfully pray this Honorable Court to strike and dismiss the instant complaint and to deny all relief thereunder.

/s/ William G. Clark
Attorney General of the
State of Illinois
160 No. LaSalle Street
Chicago, Illinois 60601

John M. Sorrentino
Assistant Attorney General
Of Counsel

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV-68-83D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION TO AMEND MOTION TO DISMISS—
Filed November 8, 1968

Now comes WILLIAM G. CLARK, Attorney General of the State of Illinois and Attorney for defendants Jeffie Biggs, Paul Sympson, and Russell Lence, to ask that the motion to dismiss previously filed be amended so that it is also the motion of the defendants Biggs, Sympson and Lence. In support of this motion to amend the motion to dismiss, the Attorney General says as follows:

1) This civil rights action, brought by an inmate of the Illinois State Penitentiary to recover some $500,000 in alleged damages, was filed by leave of court on July 1, 1968. Thereafter at various times, service was had upon various defendants.

2) On July 22, 1968, a motion to dismiss was filed on behalf of all defendants except those on whose behalf this motion is made. It was only through inadvertence that the three defendants above named were not specifically named in the motion to dismiss, and it was not until the plaintiff filed a motion for default judgment against these three defendants that the mistake was discovered. As a matter of fact, the cover letter accompanying the motion to dismiss recited that the motion was on behalf of "Otto J. Kerner, former Governor of Illinois and the other named defendants . . . ."

3) As is more fully set out in the motion to dismiss previously filed, the plaintiff has failed to state a claim and this action is completely without legal justification.

For these reasons, the defendants Biggs, Sympson and Russell Lence ask that an order be entered, amending the motion to dismiss to include their names.

/s/ William G. Clark
Attorney General of the
State of Illinois
160 North LaSalle Street
Suite 900
Chicago, Illinois 60601
(346-2000)
Attorney for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

Cv. No. 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, ET AL., DEFENDANTS

ORDER DENYING MOTION FOR DEFAULT AND ALLOWING MOTION TO AMEND MOTION TO DISMISS—
Filed November 8, 1968

This matter having come on to be heard on motion of the plaintiff for default, and the court being fully advised in the premises finds that said motion should be denied.

Also coming on for hearing is motion to amend presented by the Attorney General of the State of Illinois to include defendants Biggs, Sympson and Lence in the motion to dismiss, and the court finds that said motion should be allowed.

IT IS HEREBY ORDERED that the motion for default be, and is hereby, denied.

IT IS HEREBY FURTHER ORDERED that the motion to amend motion to dismiss be, and is hereby, allowed.

IT IS HEREBY FURTHER ORDERED that the plaintiff is granted an additional 20 days to file any additional or supplemental brief to the motion to dismiss, and the defendants are to answer said brief within 20 days after the filing of any supplemental brief.

Entered this 8th day of November, 1968.

/s/ Henry S. Wise
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

NOTICE AND PROOF OF SERVICE

To: Hon. William G. Clark, Attorney General
Supreme Court Building
Springfield, Illinois

Please take notice that there is being filed in the above entitled case Motion for Leave to file Admissions and Interrogatories against certain named defendants.

Please take further notice that hereto attached are full and complete copies of all papers now being filed.

Please take further notice that this service is being made upon you as Counsel for the said Defendants with the exceptions of the Defendant Lence.

/s/ Francis Haines
Plaintiff

STATE OF ILLINOIS)
) ss.
RANDOLPH COUNTY)

Francis Haines, being first duly sworn, on oath deposes and says that he has made service of the papers now being filed in this Court upon the Defendants Randolph, Frye, Lence, Sheets and Gentsch, along with such service upon the Attorney General of Illinois, William G. Clark, such done by giving the Prison Officials a copy of the papers for delivery to each defendant along with a copy of such papers for mailing to William G. Clark at his above address, on this 14 day of November, A. D. 1968.

/s/ Francis Haines

Subscribed and sworn to before me, a Notary Public, on this 14 day of November, A. D. 1968, by Francis Haines.

/s/ Donald G. Gentsch
Notary Public
My Commission Expires
June 21, 1969

[SEAL]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

CV No. 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION FOR LEAVE TO FILE ADMISSIONS AGAINST CERTAIN NAMED DEFENDANTS, PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 15, 1968

Plaintiff, Francis Haines, respectfully moves that he be permitted leave to file, pursuant to Rule 36, Federal Rules of Civil Procedure, Admissions to be directed to the Defendants, Ross V. Randolph, Max P. Frye, Russell Lence, William Sheets, and Donald Gentsch, and that this Court may order the same to answer such admissions.

In support of his above motion plaintiff avers that such have been made necessary to develop the facts of the complaint.

In further support of the above motion plaintiff hereto attaches an affidavit.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION FOR LEAVE TO FILE INTERROGATORIES AGAINST CERTAIN NAMED DEFENDANTS PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 15, 1968

Plaintiff, Francis Haines, respectfully moves that he be permitted leave to file, pursuant to Rule 33, Federal Rules of Civil Procedure, Interrogatories to be directed to the Defendants Ross V. Randolph, Max P. Frye, Russell Lence, William Sheets, and Donald Gentsch and that this Court may order the same to answer such Interrogatories.

In support of his above motion plaintiff avers that such have been made necessary to develop the facts of the complaint.

In further support of the above motion plaintiff hereto attaches an affidavit.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

AFFIDAVIT IN SUPPORT OF MOTIONS

STATE OF ILLINOIS)
) ss.
RANDOLPH COUNTY)

Francis Haines, being first duly sworn upon his oath, deposes and says: that he is plaintiff in the above entitled cause; that he makes this affidavit in support of his motion for leave to file Admissions and Interrogatories; that he believes that it is necessary to further develop the facts of the case in the light of recent actions; that on or about October 17, 1968, he went to the Inmates Commissary and was permitted to purchase Cosmetics, such as V. O. 5 Hair Oil; After Shave Lotion; Scented Soap; that he tried to buy Hello or Get Well Gretting Cards but was only permitted to buy a Birthday Card; that he was permitted to buy Tooth Paste and Aspirans; that he needs the rules pertaining to the Inmates Commissary so that he may learn the reasoning behind the rules which permit him to buy things TO MAKE HIM SMELL NICE AND DENY HIM PAPER ON WHICH TO PETITION THIS COURT; that he is given paper by the Institutional Commercial School because he is in "C" Grade; this paper is yellow in color; that he makes service copies upon used papers for service on the defendants.

That on October 24, 1968, while he was having papers notarized to be sent to this Court he asked the Defendant Gentsch how was it that some inmates did not receive a year in "C" Grade; that he was told by the Defendant Gentsch that convicts could petition for restoration to Grade by petition to the Progressive Merit System Board;

that such is the first time he ever knew of such provision and that such is not contained in the Inmates Rule Book; that the Progressive Merit System Rules as contained in Paragraph 17, Page 6 of the Complaint, under subtitle "PROMOTIONS" it is said: "in the event of demotion you must spend one year in "C" Grade"; that this Rule and others unknown to Plaintiff are thought to be in the large Rule Book in the Institutional Record Office.

That he is now in bad straights in regards to legal paper as he has to beg from other inmates enough paper to make a copy before he can ask the Commercial School and show such copy to get other paper.

That he is contemplating opening a Football Parlay Ticket in the Institution to get enough cigarettes to trade other inmates for writ papers; that both the trading and parlay tickets are in violation of the institution rules; that the parlay ticket is in violaton of the Laws of Illinois; and if he is caught with parlay tickets it might result in another trip to solitary confinement if not a trial in a criminal court.

That under General Rule No. 15 in the Institution Rule Book an inmate can be punished for giving another inmate a piece of candy, and such rule states: "Trafficking, bartering and trading are strictly forbidden." that under this rule he would be forbidden to take paper which has been offered by other inmates and would be forbidden to "traffic by trading cigarettes for paper; that he believes it is now time for this Court to consider the Ancillary Writ of Injunction asked in regards to the purchase of paper from sources other than the commissary.

That his foregoing statements are true and correct.

/s/ Francis Haines

Subscribed and sworn to before me, a Notary Public, by Francis Haines, on this 14 day of November, A. D. 1968.

/s/ Donald G. Gentsch
Notary Public
My Commission Expires
June 21, 1969

[SEAL]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS UNDER RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Ross V. Randolph, within ten days after allowance of these Admissions by the Court, to make the following Admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

That you are duly appointed Director of Public Safety of the State of Illinois?

That as such Director you are commanded by the Laws of Illinois to exercise the powers and discharge the duties of such Department?

That you are given Rule making authority for the Illinois State Penitentiary System by the provisions of Paragraph 10, Chapter 108, Illinois Revised Statutes, 1967?

That you have exercised such power: to quote the Attorney General of Illinois, in his motion to dismiss in the above entitled cause as follows:

> "Pursuant to its rule making authority (1967 Ill. Rev. Stat. Ch. 108, S. 10) the Department of Public Safety has prescribed that all prisoners shall be divided into three grades ("A", "B" & "C".)"

That the provisions of 1967 Illinois Revised Statutes, Ch. 108, pars. 76-81, requires that the Department of Public Safety shall classify all prisoners into three grades, viz: First, Second and Third Grades?

That there are no provisions contained in the above Paragraphs 76-81, concerning disciplinary measures in such classifications?

That the classification scheme contained in the above paragraph 76-81 are to be based upon ability and willingness to work in general?

That is required by Illinois Revised Statutes, 1967, Ch. 108, Paragraph 41, that the Rules and Regulations to be read to the Convicts at least once each month?

That the provisions of Illinois Revised Statutes, 1967, Ch. 108, Paragraph 45, require that the Department of Public Safety to make Good Time Rules for the diminution of sentences?

That the Progressive Merit System Rules, as contained in Paragraph 17, Page 6, of the Complaint, is a correct copy of the Rules as contained in the Current Rule Book at Menard Prison?

That there is a Rule within the Progressive Merit System which permits convicts to petition for restoration to Grade every three (3) months?

That there is a Rule within the Progressive Merit System which states all convicts can be placed in "C" Grade?

That there are no provisions within the Progressive Merit System Rules made available to convicts which state that a convict in "C" Grade can only buy Cosmetics at the Commissary and cannot buy paper on which to type a petition to the Courts?

That the provisions of the Illinois Constitution, as set forth in Paragraph 8, Page 4, of the Complaint are a correct recital of such provisions?

That the Act of 1867, Sessions Laws, Page 31, Illinois Statutes 1868, Section 37, Chapter 81, is correctly recited in Paragraph 13 (b), Page 5 of the Complaint?

That the act of July 1, 1871, Illinois Revised Statutes, 1925, is correctly quoted in Paragraph 13 (c) Page 5 of the Complaint.

That the Plaintiff appeared before the Parole Board in 1959, received a continuance to 1964; appeared before the Parole Board in 1964, received a continuance

to 1967; appeared in 1967, received a continuance to 1968; appeared 1968, received a continuance to 1970?

That under none of these above continuances did Plaintiff receive the benefits of any good time regulations?

That during the year 1968 Inmate John Baze, 33182, was taken before the Circuit Court of Randolph County, Illinois, and tried for escaping from the Prison Honor Farm?

That the following Rules contained as Commissary Rules in the present Institutional Rule Book, Page 26, read as follows:

> "2) Have your store order filled out properly (typed)."
>
> "5) You will file past the Commissary Officer with your order in your hand, and after he has placed your balance on same, put your prints on the order in two places and proceed to secure your order as instructed by your officer."

That the Opinion of Mr. Justice Rutledge, concurring in Screws v. United States, 325 U.S. 91, at 129, states as follows:

> "Generally state officials know something of the individuals basic legal rights. If they do not, they should, for they assume that duty when they assume their office. Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore know and observe it."

That the interdictions of Title 42 United States Code, Section 1985, prohibit the deprivation of the right to the due course of Justice in any state or territory?

That there is in the Menard State Penitentiary a place of confinement known by various names, officially as Observation and Isolation, and colloquially as "The Hole", "Solitary Confinement" and "Sympsons Hotel" and that punishment in such is aptly described in the Complaint, Paragraph 19, Page 8?

That you, as Director of Public Safety, are considered the Supreme Administrator of the Illinois Penitentiary System?

That you received the Service Copy of this Request for Admissions typed upon used paper?

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Ross V. Randolph, within ten days after allowance of these Interrogatories by the Court, to answer the following Interrogatories for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

That in your enforcing the Progressive Merit System Rules at the penitentiary, why are those prisoners serving Definite Sentences being denied any merit time when they receive a "non-dated" continuance?

Under what particular provision of Paragraph 10, Chapter 108, Ill. Rev. Stat. 1967, are you given power and authority to classify prisoners into Grades "A", "B", and "C" when Ill. Rev. Stat. 1967, Chapter 108, Paragraph 76, states that prisoners shall be classified into First, Second and Third Grades?

Under what particular provisions of Ill. Rev. Stat. 1967, are you given the power and authority to use any Grade System for discipline when the provisions of Ill. Rev. Stat. 1967, Ch. 108, Pars. 76-81, contains no such provisions?

Under what particular reasoning do you exclude plaintiff from receiving merit time solely because he is given an undated continuance, when those men receiving a dated continuance would be given 1 year, 3 months on

a five year continuance; 9 months on a three year continuance; three months on a year continuance; and, 6 months on a two year continuance; a total of 2 years and 9 monts, the Table on Page 16 of the Current Rule Book states an eleven year continuance would be given two years and nine months merit time thereby making the prisoner eligible for review of his case in eight years and three months?

In excluding definite sentences of life from benefits of Good time what consideration have you given the requirements of Ill. Rev. Stat. 1967, Ch. 108, Par. 45, which provide that Good Time Rules should be made?

Have you, during your tenure as Warden of the Illinois State Penitentiary, Menard, Illinois, ever read the Rules and Regulations to the convicts as required by Ill. Rev. Stat. 1967, Ch. 108, Par. 41?

Have you, during your tenure as Director of Public Safety, of Illinois, required that the present Warden of the Illinois State Penitentiary read the Rules and Regulations to the convicts?

In Paragraph 17, Page 6, of the Complaint the Progressive Merit System Rules are copied, under the sub-heading "Promotions" and in the second paragraph thereof, it is stated: "In the event of demotion you *must* spend one year in "C" Grade * * *" is this emphasized word "must" to be taken in the sense of Merriman's Webster Dictionary as meaning mandatory, obligatory and required?

In view of the fact that there is nothing contained in the current Rule Book in regards to the right of an inmate to petition to restoration to Grade, how is it permitted?

Why is such provision for petition for restoration to Grade not contaiend in the Rule Book made available to convicts?

In the enforcing of Grade "C" with its consequential loss of Commissary Privileges, why are these convicts seeking to petition the Court for redress denied the right to purchase paper to write to the Courts?

In the enforcing the loss of Commissary Privileges to inmates in Grade "C" what consideration was

given to those men's right of access to the courts, when they cannot buy paper?

Do you think it is more important for a man in Grade "C" to buy Cosmetics so he can smell nice than it is to petition the Courts for redress of grievances?

Have you delegated any authority to the Defendant Sheets to alter, abrogate or annul the existing rules, whereby an inmate is not permitted to fill out his order as required by Commissary Rule No. 2 and the balance is placed upon such order by a convict other than the Commissary Officer, as required by Commissary Rule No. 5?

Under what authority, delegated or assumed, do you have the power to require an inmate in the Illinois State Penitentiary, Menard, Illinois, to buy paper at One (1¢) Cents per sheet and then furnish a copy of any legal papers being sent to the Courts for the Institutional Files?

For what reasons are these papers required for the Institutional Files used?

Taking into consideration the ruling of the United States Supreme Court in Ex parte Hull, 312 U.S. 546, that the prison officials in Michigan could not demand approval of the Parole Board Attorney before papers were sent to the Courts, upon what base do you require a copy of papers being sent to the Courts as a condition precedent for mailing of such papers to the Courts?

Are you of the opinion that the State of Illinois can vest you with the power to ignore the Constitution and Laws of the United States?

Taking into consideration that the Illinois Constitution as set forth in the Complaint, Paragraph 8, Page 4, which requires and gives, the right to trial by jury, an indictment of a grand jury for a criminal offense, the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation, to have a copy thereof, process to compel the attendance of witnesses, a speedy public trial, and not to be compelled to give evidence against himself, were such above given any consideration when plaintiff was placed in solitary confinement and "C" Grade for actions which might constitute a crime under the Laws of the State of Illinois?

Under what particular Illinois Statute do you profess to have power to make rules which might deny any person of the right to the due course of justice in the State of Illinois for offenses committed in the Illinois State Penitentiary?

Under what particular Illinois Statute do you proprofess to have power to impose Solitary Confinement as punishment for breach of prison rules in view of the Act of July 1, 1871, Ill. Rev. Stat. 1925, Ch. 108, Par. 37, prohibited cruel and unusual punishments in the Illinois Prisons?

Are you of the opinion that revocation of the above law would resinstate the provisions of the 1827 and 1867 laws which permitted the imposition of Solitary Confinement?

Have you been relying upon custom, usage or prior practice in your formulation of prison rules?

Have you given any consideration to the Rule of Law as stated in United States v. Jones, 207 F. 2nd. 785 (CCA 5) that a violation of the Laws of a State might constitute a violation of the Federal Civil Rights Acts.

Are you of the opinion that your position as a state officer would vest in you the power to overthrow or ignore the Constitution and Laws of the United States?

Have you delegated any disciplinary powers to the Defendant William Sheets, as Commissary Officer in the Menard Prison, to remake or ignore the Rules in the inmates Rule Book?

Have you authorized the Defendant Sheets to refuse to sell writ paper to inmates in "C" Grade, and to limit such inmates to purchase of Cosmetics?

Why has Defendant Sheets been permitted to formulate or enforce a rule which prohibits an inmate from filling out his Commissary Order as required by Rule 2 of the Commissary Rules?

Has any consideration been given to a surmise that such action might permit inmate commissary clerks to add items to the commissary orders after the inmate has traded, and therefore take what is known in the institution as the "Inmates Tax" to cover shortages?

Are you aware or were you informed that Prison Rumor has the Commissary Five Hundred ($500.00) Dollars short at the September audit?

Have you given Defendant Sheets any authority to ignore the Commissary Rule No. 5 and permit inmates to do his work, including the enforcement of prison rules, as set forth in the Complaint, Paragraph 20, Pages 8 and 9?

Have you given any consideration to the Rule which limit paper to be purchased in the commissary for writing writs to 8½ x 14 Inch Pink Paper, to be typed with Green Ink, to the Rules of Various Courts, and in particular that of the United States Supreme Court, Rule 47 (Circa 1954) which requires that typed papers be 8½ x 13 Inch Opaque, unglazed paper and the rules of the Illinois Supreme Court which require typed papers to be on 8½ x 11 inch white paper?

To what causes do you attribute the discrepancies in the cost of Menard Paper in the Commissary, Fletcher Manifold, 8½ x 14 Inch Paper, at Five ($5.00) Dollars per ream, with the price of paper in the Statesville Commissary, Hammermill Bond, 8½ x 13 White Opaque, Legal Cap, at about Two ($2.00) Dollars per ream?

To what cause do you attribute the discrepancies in the price of Typewriter Ribbons in Menard, from Two ($2.00) Dollars to Two ($2.25) Dollars, Twenty-five Cents, with the cost of Ribbons in Statesville Commissary being about One ($1.00) Dollar?

If the Rules of the Department of Public Safety are to be given an uniform application why are Statesville Convicts permitted to make applications to the Courts on White Paper with Black Ribbons and Menard Convicts required to use Pink Paper with Green Ribbons, making a much less legible copy?

Do you believe that you, as a Public Officer of the State of Illinois, can plead ignorance of the law in view of the statements of Mr. Justice Rutledge in Screws v. United States, 325 U.S. 91, 129?

Respectfully yours

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff Francis Haines, requests that Defendant Max P. Frye, within ten days after allowance of these admissions by the Court, to make the following admissions for the purposes of this action only and subject to all pertinent objections as to admissibility which may be interposed at the trial.

That you are Warden of the Illinois State Penitentiary, Menard, Illinois.

That you are a Member of the Progressive Merit System Board?

That you were Warden on March 12, 1968?

That on March 12, 1968, the Progressive Merit System Board demoted the plaintiff, Francis Haines, No. 16348, to "C" Grade, for hitting another inmate on the head with a shovel and refusing to explain his actions?

That as Warden you are enforcing a Rule which sets a condition precedent on transmission of papers to the Courts that the Institution must be given a copy of such papers?

That this Service Copy of the Request for Admissions and the Service Copy of the Interrogatories were given to you upon used papers.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURES—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Max P. Frye, within ten days after allowance of these interrogatories by the Court, to answer the following Interrogatories for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

In demoting plaintiff to "C" Grade did you consider that his actions in hitting another inmate on the head with a shovel might have been a "criminal offense" under the Laws of Illinois?

In demoting plaintiff to "C" Grade did you consider that his refusal to talk and explain his actions might be within his right to remain silent?

In demoting Plaintiff to "C" Grade for his actions did you give any consideration to the requirements of the Illinois Constitution (1870) Article II, Sections 2; 3; 8; 9; and 10, in regards to the guarantees therein contained for trial of criminal offenses?

In demoting plaintiff to "C" Grade for his actions did you give any consideration to the right to the due course of justice in the State of Illinois as guaranteed by Title 42, United States Code, Section 1985?

Why is not the rules which states all convicts may be demoted to "C" Grade contained in the Inmates Rule Books?

Why is not the rule which provides that inmates in "C" Grade may petition for restoration to "A" Grade contained in the Inmates Rule Book?

Have you ever, during your tenure as Warden, read the Rules and Regulations to the convicts?

Why do the rules now enforced in the Illinois State Penitentiary, Menard, Illinois, require that a copy of all papers being sent to the courts be provided for the Institutional files?

Where do you derive the power to impose solitary confinement in the Menard Penitentiary?

Where do you derive the power and discretion as to whether inmates who commit crimes in the Menard Penitentiary are to be tried in the Courts or summary punishment in the penitentiary?

Does the Progressive Merit System Board sit en bloc or as individuals?

Is a quorum required for action by the Progressive Merit System Board?

Whose decision was it to try those prisoners who committed the killings in the Dining Room and those other inmates who have escaped during your tenure of office in the Circuit Court of Randolph County, Illinois?

Upon what specific reasoning do you proceed in the summary trial of criminal offenses and summary punishments?

Have you been given or requested any legal opinions of your powers in regards to the imposition of summary punishments?

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Russell Lence, within ten days after allowance of these Admissions by the Court to make the following Admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

That you are Senior Guard Captain at the Illinois State Penitentiary, Menard, Illinois?

That on March 10, 1968, you were sitting as Disciplinary Officer at the penitentiary?

That on March 10, 1968, Plaintiff Francis Haines, appeared before you upon a Disciplinary Report?

That such Disciplinary Report was for hitting another inmate upon the head with a shovel?

That the Illinois Revised Statutes, 1967, Ch. 38, Division II, Article 12, Sections 2 to 6, defines the Crime of Assault and Battery, and sets the legal penalties therefore?

That the Illinois Constitution, 1870, Article II, Sections 2; 3; 8; 9 and 10 (as contained in the Complaint served upon you in Paragraph 8, Page 4), sets forth protections to be accorded to persons who are charged with criminal offenses?

That the above Constitutional provisions are supplemented by the Illinois Revised Statutes, 1967, Criminal

Law and Procedure, Ch. 38, Division III, Titles I to VII, pages 1590 to 1613, governing trial in criminal offenses?

That the Illinois Revised Statutes, 1967, Division I, Article 25-1, Section 25-1, (3) defines Mob Action and states that any assembly of two or more persons trying any person without authority of law, is a misdemeanor?

That the Defendant Rogers was present on March 10, 1968, and participated in the discussions as to the punishment to be imposed?

That the punishment imposed was fifteen (15) days?

That this punishment is known in the institutional vernacular as "The Hole", "Solitary Confinement" "Sympsons Hotel" and the "Stone House"?

That the punishment is aptly described in the Complaint, Paragraph 19, Page 8?

That a former Director of Public Safety, Mr. Michael Seyfrit is quoted in Illinois Criminal Law and Procedure (Stanton 1955) on Paroles, Pardons, Rules and Regulations, Chap. 26, Par. 1686, pp. 659-660, as saying (emphasis supplied):

> "* * * minor violations, unless a number, usually three or more, occurring within a period of a year or less, generally do not call for demotion, *solitary confinement for varying lengths of time usually being considered sufficient.*"

What changes, to your knowledge, other than the installation of plumbing, has been made in this area of punishment since 1955?

In addition to this imposition of solitary confinement plaintiff was also demoted to "C" Grade.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Russell Lence, within ten days after allowance of these interrogatories by the Court, to answer the following interrogatories for the purpose of this Action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

From where do you derive your power as Disciplinary Officer, while sitting as such, statutes, Institutional Rules or Custom and Usage?

On March 10, 1968, did you give any consideration as to whether or not the facts contained in the Disciplinary Report on the Plaintiff, Francis Haines, might constitute a criminal offense under the Laws of the State of Illinois?

Have you any knoweldge of the varying degrees of the actions which constitute assault and battery?

On March 10, 1968, did you have any knowledge of the guarantees contained in the Illinois Constitution, Article II, Sections 2; 3; 8; 9 and 10; regarding trial of criminal offenses in the State of Illinois?

On March 10, 1968, did you have any knowledge of the interdiction of the Federal Civil Rights Acts, Title 42 United States Code, Sections 1981, 1983 and 1985?

On March 10, 1968, did you have any knowledge of the provisions of the Illinois Revised Statutes, 1967,

Criminal Law and Procedure, Ch. 38, Division III, Titles I to VII, pages 1590 to 1613, which govern trial in criminal offenses in Illinois?

On March 10, 1968, did you have any knowledge of the organic law relating to the three preceeding questions?

If, on March 10, 1968, you had any knowledge of the Rule of Law that Ignorance of the Law is no excuse for men in general and much less an excuse for state officers, would you have proceeded as you did. Such Rule being set forth in the opinion in Screws v. United States, 325 U.S. 91, at 129 (concurring opinion by Mr. Justice Rutledge) as follows?

> "Generally state officials know something of the individuals basic legal rights. If they do not, they should, for they assume that duty when they assume their office. Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore know and observe it."

On March 10, 1968, were you aware of the provisions of Title 42, United States Code, Section 1985, which prohibits the taking of the due course of justice in any state or territory?

If you had such knowledge would you have given consideration to such law?

Have you made any effort to obtain knowledge of prisoners basic legal rights, under the State and Federal Constitutions and Laws?

Did the plaintiffs refusal to explain his actions to you have any bearing upon the amount of punishment imposed?

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant William Sheets, within ten days after allowance of these admissions by the Court to make the following admissions for the purpose of this action only subject to all pertinent objections of admissibility which may be interposed at the trial.

That you are Commissary Officer at the Illinois State Penitentiary, Menard, Illinois.

That on March 27, 1968, Inmate Bond, Register Number 32163, was assigned to work under your supervision at the Inmates Commissary.

That the duties of Inmate Bond included the placing of Inmates balance upon their Commissary Slips.

That Commissary Slips by Inmates are required to be turned in with only the heading thereof typed and the item list vacant.

That Commissary Rule No. 2 in the Current Inmate Rule Book reads as follows:

"Have your order filled out properly (typed)"

That Commissary Rule No. 5 in the Current Inmate Rule Book reads as follows:

"You will file past the Commissary Officer with your order in your hand, and after he has placed your

balance on same, put your prints on the order in two places, and proceed to secure your order as instructed by your officer."

That Fletcher Manifold Paper, sixe 8½ x 14 inch, Pink in Color, is sold at the price of one (1¢) cent per sheet.

That the price of M & M Carbon Paper is ten (10¢) cents per sheet in the Commissary.

That the price of typewriter Ribbons, Green in Color, when first placed in the Commissary in the Fall of 1964 were One ($1.50) Dollar, Fifty Cents.

That in the year of 1967 the Plaintiff purchased at least three typewriter ribbons, paying varying prices for the same, from Two and a Half ($2.50) Dollars to Two ($2.00) Dollars.

That inmates in "C" Grade are permitted to purchase only Cosmetics under the Rules enforced by you.

That when an inmate has the rush placed upon him in the Commissary before he can check his order he has no recourse to recover any shortages.

That you have no Price List posted in any conspicious place where it can be read in the Commissary and no price list is currently available in the institution.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant William Sheets, within ten days after allowance of these interrogatories by the Court, to answer the following interrogatories for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

Have you been vested with any power, discretion of authority to alter, amend or ignore the Commissary Rules as contained in the current Inmate Rule Book in the Illinois State Penitentiary, Menard, Illinois?

In the event you have not been vested with any power, discretion or authority to alter, amend or ignore the Commissary Rules in the Rule Book why are not inmates permitted to have their store orders typed as required in Commissary Rule No. 2; and only the Inmate Clerks permitted to list the items purchased?

Why are not these Inmate Clerks required to Red Line Commissary Orders?

Do you receive any complaints from the inmates in the Illinois State Penitentiary, Menard, Illinois, that additional items are placed on their Commissary Lists after they have left the commissary?

Is any Audit or Check of any kind made upon Commissary Orders after an Inmate has traded?

How long is it since you personally put an inmates Balance on his Commissary Order as required by Commissary Rule No. 5?

What is the price you pay for Fletcher Manifold per ream?

What considerations prompted the selling nothing but Pink Paper to write papers to the Courts?

If the consideration that too much state paper was being stolen for use by inmates did you or the person ordering Pink Paper give any consideration to the fact that paper with Watermarks could have been purchased for sale in the Commissary?

May it be correctly stated that until about 1964 that this Pink Paper was sold by the Ream at a price of Four ($4.00) Dollars per ream in the commissary?

That while this Pink Paper was being sold for the above sum it was priced in less than Ream Lots at one (1¢) cents per sheet, because of the time and bother to count it out?

What is your cost of the Green Typewriter Ribbons sold at the Commissary?

Why are inmates compelled to take what an inmate clerk brings not rather than a ribbon which fits his machine?

Are you aware of the use of the term "Inmate Tax" as used in the institution in relation to the Commissary?

Are you aware of the Prison Rumor that the Inmates Commissary Books was Five ($500.00) Dollars short at the September Inventory?

Was it because of this shortage in the inventory that the prices of Hair Oil and Coffee were raised?

Is the Federal Excise Tax still in existence on the sale of V. O. 5 Hair Oil?

If such Federal Excise Tax is still in existence are you paying tax on the selling price over the advertised price of $1.10?

Are you aware that the Federal Criminal Code, Title 18, United States Code, Section 3, requires as follows:

> "Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact."

Are you aware that the Federal Criminal Code, Title 18, United States Code, Section 4, provides:

> "Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years."

Are you aware of the rulings of the United States Supreme Court in Re Quarles, 158 U.S. 352; and Motes v. United States, 178 U.S. 458; that every person has the right to inform the United States of the violations of its laws?

What objections could you have to the plaintiff informing the United States authorities of the violation of their laws if you are not paying the additional excise tax upon the added price of V. O. 5 Hair Oil?

Within the months of August, September and October, 1968, has any inmate assigned to the Inmates Commissary been transferred for giving Commissary Articles to a pervert?

Have you ever considered that the refusal of the Commissary to sell the Plaintiff paper on March 27, 1968, might be a violation of his right to access to the Courts?

Did Inmate Bond properly heed your Orders and Instructions on March 27, 1968, when he told the Plaintiff that he could take the matter to court, if he, plaintiff, did not like it?

Under what line of reasoning do you operate when you fail and/or refuse to sell paper which compares to the requirements and rules of the various courts?

Are you aware that the Rules of the United States Supreme Court Rule 47 (Circa 1954) requires opaque, unglazed paper, 8½ x 13 inches in size (Legal Cap.)?

Is there any full, complete and entire copy of all Commissary Rules in existence?

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Donald Gentsch, within ten days after allowance of these admissions by the Court to make the following admissions for the purposes of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

That you are Record Clerk at the Illinois State Penitentiary, Menard, Illinois?

That you are a Member of the Progressive Merit System Board at the Illinois State Penitentiary, Menard, Illinois?

That as such Record Clerk you prepare what is known as the Parole Board Dockets for each month?

That there is an Institutional Rule Book in Your Office, approximately in size as follows: Contained in a Ledger Binder, 8½ x 14 inches, about 5 inches thick of typed papers?

That on or about April 2, 1968, you opened this Ledger Book to show plaintiff a rule which stated that all convicts could be placed in "C" Grade, in answer to plaintiff's letter to Defendant Lewis C. Lence complaining about being placed in "C" Grade?

That plaintiff told you that when he was given Good Time for the twenty-nine (29) years he had served he would accept "C" Grade with good graces?

That plaintiff told you he should be classified into either First, Second or Third Grade according to the Illinois Laws?

That in answer to the above statement you produced a Volume of the Illinois Revised Statutes, 1967, which contained Chapter 108 of such laws, and turned to Paragraphs 76-81 and plaintiff pointed out to you wherein it spoke of First Grade and you then closed the book.

That on or about October 24, 1968, when plaintiff was having legal papers notarized he asked of you how some cinvicts spent only three months in "C" Grade and you informed him that convicts had the right to petition for restoration of grade every three months?

That neither of these above provisions: all convicts can be placed in "C" Grade and all convicts can petition for restoration to the prior grade are contained in the Inmates Rule Book.

That you are the Notary Public who notarized papers being sent to the Courts.

That it is a condition precedent for mailing legal papers to the Courts that the Institutional Files must be furnished with a copy of all such papers.

That in the current Inmates Rule Book, page 16, there is contained therein a merit time table which states, in part, as follows.

"MERIT TIME EARNED ON A SET.

"Continuance in years from date of arrest of date of sentence	"Merit Time earned in years, months.			"Case reviewed in years, months.		
	yrs.	Mo	days	yrs	mo	days
20	5	0	0	15	0	0
11	2	9	0	8	3	0

That plaintiff was received in the Illinois State Penitentiary, Joliet, Illinois, on July 12, 1939.

That plaintiff appeared before the Parole Board at Menard, Penitentiary and received a continuance until July 1970.

That taking from his entrance in 1939 until 1970 plaintiff has received thirty-one (31) years of continuances.

That taking the above table extracts as a guide plaintiff can be said to be entitled to seven (7) years and nine (9) months Merit Time, less time lost, and therefore can be said to only have to serve twenty-three (23) YEARS AND THREE (3) months to have his case reviewed by the Parole Board.

That since plaintiff has now served twenty-nine (29) years and four (4) months, which is six (6) years and one (1) month over the required twenty-three (23) years and three (3) months set forth in the table in the Inmates Rule Book.

That you exclude prisoners receiving an undated continuance from the benefits of the Merit Time Tables.

That prisoners serving definite sentences receive undated continuances.

That you received the Service Copy of these admissions and interrogatories typed upon used papers.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Donald Gentsch, within ten days after allowance of these interrogatories by the Court, to answer the following interrogatories for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

As Record Clerk at Menard Prison, do you maintain or possess any copy of the Daily Journal required to be kept by the Department of Public Safety by Illinois Revised Statutes, 1967, Ch. 108, Par. 17?

In what manner does the Progressive Merit System Board act in demoting convicts, en bloc or as individuals?

During your tenure as a member of the Progressive Merit System Board has any convict ever been given the opportunity to be heard in defense of the charges?

Does the Ledger Book which was used to show plaintiff that all prisoners could be placed in "C" Grade contain all the institutional rules?

That the placing of an inmate in "C" Grade is a disciplinary action?

Do you know of, as Record Clerk, of any classification of the convicts pursuant to the requirements of Illinois Revised Statutes, 1967, Ch. 108, Pars. 76-81?

Do you know of any interpretation of Illinois Revised Statutes, 1967, Ch. 108, Pars. 76-81, which construes it so as to permit disciplinary action to be taken there-

under, either by the Courts, the Attorney General or the prison administration?

Who wrote up the plaintiff for consideration by the Progressive Merit System Board for demotion?

Is there a copy of such report for demotion contained in the Daily Journal of the Institution Files?

Where is the rule pertaining to the right of an inmate to petition for restoration to Grade contained?

How many other Progressive Merit System Rules, other than the two herein spoken of, are in existence and not contained in the Inmates Rule Book?

If such above rules exist, where are they contained?

Where is the rule which requires a copy of all papers being sent to the Courts be furnished for the Institutional Files contained?

What becomes of such copies furnished to the Institutional files, is information concerning them given either to Law Enforcing Officials, Courts or the Parole Board?

Are convicts serving Definte Sentences for the crime of Burglary, other than those convicted as Habitual Criminals, given Good Time as provided by law, for diminution of their maximum term?

Is there any Order in the Institution Files, similar to the below quoted Bulletin?

"November 18, 1955

Bulletin No. 246.

"Quoted below is a copy of the Order received from the Parole and Pardon Board dated November 9th.

"Commencing with the December 1955, parole docket and all future dockets, inmates whose names appear thereon who are out of grade, or in solitary confinement, shall not appear before members of the Board for hearing.

"Their cases shall be continued until such time as they have made grade or have been released from solitary confinement.

(Signed) J. E. RAGEN
Warden"

The above being listed as Bulletin No. 246, dated November 9th, 1955, at Statesville Branch?

Are you aware of the Opinion of the Attorney General of Illinois, No. 298, p. 77, 1944 (dated April 19, 1944, therein is said in the final Paragraph thereof, that:

> "Paragraph 807, Chapter 38, Illinois Revised Statutes, 1943, supra, explicitly provides for the discharge of a prisoner at the expiration of the maximum term provided by law for the offense for which a prisoner is committed; making allowance for good time as provided by law."

In view of the statement of the Attorney General that allowance must be made for Good Time upon the Maximum Sentence how is such Good Time computed in relation to the Plaintiff's Sentence?

Has the Progressive Merit System Board made any Rules and Regulations concerning what items an inmate in "C" Grade may purchase in the Commissary?

If so, has the Defendant Sheets been given any authority to alter, amend or modify the same?

If the Progressive Merit System Board has made any rules or regulations concerning Commissary purchases by inmates in "C" Grade where and how can such be learned?

Respectfully submitted
/s/ Francis Haines
Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ILLINOIS

Cv. 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, Former Governor, State of Illinois, Chicago, Illinois; ROSS V. RANDOLPH, Director of Public Safety, State of Illinois, Springfield, Illinois; MAX P. FRYE, Warden; LEWIS C. LENCE, Assistant Warden; PAUL V. SYMPSON, Senior Guard Captain; RUSSELL LENCE, Guard Captain; E. ROGERS, Guard Lieutenant; DONALD GENTSCH, Record Clerk; WILLIAM SHEETS, Commissary Officer; PAUL T. DUNCAN, Guard, all of the Illinois State Penitentiary, Menard, Illinois 62259, DEFENDANTS

ORDER DISMISSING COMPLAINT—
Entered December 19, 1968

Motion of the defendants to dismiss the complaint filed by the plaintiff having come on for hearing, briefs having been filed, and the court being fully advised in the premises finds that this is a civil rights action for damages in the amount of $250,000.00 for depriviation of plaintiff's rights by means of conspiracy by the defendants.

The complaint alleges that the plaintiff an inmate of the Illinois State Penitentiary at Menard, Illinois, hit another inmate with a shovel. The plaintiff alleges that he would not reveal to the officers the reason for his action and disciplinary measures were taken by the prison authorities and the plaintiff was demoted to Grade "C" and a demotion to this grade causes the inmate to lose certain privileges. The plaintiff alleges that he does not come under the grade system inasmuch as he received a life sentence. Illinois Revised Statutes, Ch. 108, § 10

provides for the "Powers and duties of Department of Public Safety" and reads in part as follows:

> "The Department shall make and enforce all such general rules, regulations and orders for the government and discipline of the penitentiary as it may deem expedient . . . ."

In accordance with this authority the Parole and Pardon Board enacted certain rules and regulations. Rule 1 provides in part as follows:

> "(C) Every person sentenced to the penitentiary regardless of when sentenced, and regardless of the length of sentence shall be eligible for parole at the end of 20 years unless his or her minimum sentence, less "Good Time" is less than 20 years.
>
> "In each case 'Good Time' shall be deducted as prescribed by the rule of the Department of Public Safety providing for the diminution of sentences as required by statute, hereinafter referred to as 'Good Time', as distinguished from 'Merit Time'."

Illinois Revised Statutes, Ch. 108, § 45 provides as follows:

> "The Department of Public Safety is authorized and directed to prescribe reasonable rules and regulations for the diminution of sentences on account of good conduct, of persons heretofore and hereafter convicted of crime, who are confined in the State penal and reformatory institutions."

Except under exceptional circumstances, internal matters in state penitentiaries are sole concern of states and federal courts will not inquire concerning them. U.S. ex rel. Lee v. People of State of Illinois, C.A. Ill., 1965, 343 F. 2d 120; U.S. ex rel. Knight v. Ragen, C.A. Ill., 1964, 337 F. 2d 425, certiorari denied 380 U.S. 985. This plaintiff has failed to show that the defendants, while acting under color of state law or in conspiracy with each other, deprived or abridged his federally protected rights, privileges, or immunities as required by 42 U.S.C. § 1983 and § 1985(2). The defendants were merely car-

rying out the rules and regulations of the institution as provided by law.

IT IS THEREFORE ORDERED that the motion to dismiss be, and is hereby, allowed, and the cause of action is dismissed.

Entered this 19th day of December, 1968.

/s/ Henry S. Wise
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ILLINOIS

Cv. 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, ET AL., DEFENDANTS

ORDER DENYING MOTION FOR REHEARING—
Entered January 8, 1969

Motion of plaintiff to reconsider and set aside order dismissing complaint entered December 20, 1968, having come on for hearing, and the court being fully advised in the premises finds its order of December 20, 1968 covers the issues involved and no change will be made as to said order.

IT IS THEREFORE ORDERED that the motion for reconsideration and setting aside of order dismissing complaint entered by this court on December 20, 1968 be, and is hereby, denied.

Entered this 8th day of January, 1969.

/s/ Henry S. Wise
United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

CV 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION FOR LEAVE TO FILE AND PROSECUTE APPEAL IN FORMA PAUPERIS, PURSANT TO TITLE 28 UNITED STATES CODE, SECTION 1915 (a) AND RULE 75 (m) FEDERAL RULES OF CIVIL PROCEDURE—Filed January 31, 1969

Francis Haines, plaintiff in the above entitled cause, moves the Court that he be permitted leave to prosecute his appeal in Forma Pauperis as provided in Title 28, United States Code, Section 1915 (a) and Rule 75 (m), Federal Rules of Civil Procedure, construed in Adkins v. Dupont, 335 U. S. 331.

In support of his above action plaintiff avers that he presents his motion pursuant to the teachings of Adkins v. Dupont, 335 U. S. 331, at 337, construing Rule 75 (m), Federal Rules of Civil Procedure.

In further support of his motion plaintiff avers that he will present typewritten Transcripts of the Record to the United States Court of Appeals.

In further support of his motion plaintiff avers that he will pay the filing fee in the Court of Appeals, which he understands to be Twenty-five ($25.00) Dollars.

In further support of his motion the plaintiff avers that he included in his Motion of Appeal the specific questions upon which he desires to appeal.

In further support of his above motion plaintiff avers that he is sending to borrow the money to pay the filing fee in the Court of Appeals.

Plaintiff hereto attaches his Affidavit of Forma Pauperis, made Pursuant to Adkins v. Dupont, 335 U. S. 331.

Respectfully submitted

/s/ Francis Haines
Plaintiff-Appellant, Pro Se
Reg. No. 16348
Box 711
Menard, Ill. 62259

A

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

CV 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, ET AL., DEFENDANTS

NOTICE OF APPEAL—Filed February 13, 1969

To: Attorney General of Illinois
160 No. LaSalle St.
Chicago, Ill. 60601

You will please take notice that the Plaintiff herein, Francis Haines, has filed in the Office of the Clerk of the United States District Court, Eastern District of Illinois, his notice of appeal by him, from the Judgments entered in the case, wherein the judgment of the said Court was that the actions complained of were taken under and warranted by law, and ordered that the said

Complaint be dismissed upon the Motion to Dismiss by the Attorney General of Illinois.

That, therefore, Plaintiff herein notifies the Defendants that he has filed his Notice of Appeal to the Circuit Court of Appeals for the Seventh Circuit.

From the entire judgment of the District Court aforesaid and his grounds for said appeal, the errors relied upon are:

1. That the United States District Court, Eastern District of Illinois, erred in deciding grave constitutional matters upon a Motion to Dismiss and without hearing the facts and the law.

2. That the United States District Court, Eastern District of Illinois, erred in holding that the Complaint failed to state a valid cause of action under the Federal Civil Rights Acts.

3. That the United States District Court, Eastern District of Illinois, erred in failing and refusing to follow the teachings of the United States Supreme Court in Screws v. United States, 325 U. S. 91, 104, that the statutory protection of the Federal Civil Rights Acts, extends to every right "which has been made specific by the express terms of the Constitution and Laws of the United States or by decisions interpreting them."

4. That the United States District Court, Eastern District of Illinois, erred in failing and refusing to follow the teachings of the United States Supreme Court in Robinson v. California, 370 U. S. 660, 666, and Mr. Justice Douglas in concurring at 370 U. S. 675, that the Eighth Amendment was applicable to the States, as said in Wright v. McMann, 387 F. 2d 519, 522, and Jackson et al. v. Bishop (8 Cir. December 9, 1968), slip opinion page 11, Nos. 18957-59.

5. That the United States District Court, Eastern District of Illinois, erred in failing and refusing to follow the teachings of the United States Supreme Court in Cooper v. Pate, 378 U. S. 546, that upon a Motion to Dismiss the Court must accept all facts as true, and as set forth and done in Picking v. Pennsylvania Ry. Co., 151 F. 2d 240, 246, cert. denied 332 U. S. 766; Wright v. McMann, 387 F. 2d. 519-522.

6. That the United States District Court, Eastern District of Illinois, Honorable Henry S. Wise, Judge Presiding, has sat in review of prison rules and regulations which he had approved as a Member of the Illinois Parole Board on May 8, 1962, and contained in a Rule Book entitled "Rules and Statutes relating to Parole and Pardons", as distributed in the Illinois State Penitentiary System.

7. That the United States District Court, Eastern District of Illinois, erred in failing and refusing to consider the language of Illinois Statutes of 1868, Ch. 81, Par. 37, which define "solitary confinement" as unusual confinement and therefore within the proscription of the Eighth and Fourteenth Amendments of the Constitution of the United States.

/s/ Francis Haines
Plaintiff, Pro Se
Reg. No. 16348
Box 711
Menard, Ill. 62259

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1969—APRIL SESSION, 1970

No. 17511

FRANCIS HAINES, PLAINTIFF-APPELLANT

v.

OTTO J. KERNER, Former Governor, State of Illinois, Chicago, Illinois; ROSS V. RANDOLPH, Director of Public Safety, State of Illinois, Springfield, Illinois; MAX P. FRYE, Warden; LEWIS C. LENCE, Assistant Warden; JEFFIE BIGGS, Assistant Warden; PAUL V. SYMPSON, Senior Guard Captain; RUSSELL LENCE, Guard Captain; E. ROGERS, Guard Lieutenant; DONALD GENTSCH, Record Clerk; WILLIAM SHEETS, Commissary Officer; PAUL T. DUNCAN, Guard, all of the Illinois State Penitentiary, Menard, Illinois 62259, DEFENDANTS-APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ILLINOIS

OPINION—May 25, 1970

Before KNOCH, *Senior Circuit Judge*, FAIRCHILD, *Circuit Judge*, and GRANT, *District Judge*.*

KNOCH, *Senior Circuit Judge*. Plaintiff-appellant Francis Haines, brought suit in the United States District Court, pursuant to the Civil Rights statutes, Title 28 U.S.C. § 1343(3) and Title 42 U.S.C. § 1981, *in forma pauperis*, to recover a total of $500,000 as damages for deprivation of his rights, under Title 42 U.S.C. §§ 1981, 1983 and 1985(2).

* Judge Grant from the Northern District of Indiana is sitting by designation.

Plaintiff's Complaint states that he is confined in the Illinois State Penitentiary at Menard, Illinois. He describes the defendants as officers and employees of the State of Illinois and as conspiring among themselves and with others, directly or through agents, to deny Plaintiff his Constitutional rights, principally, to be free of cruel and unusual punishments and not to be deprived of liberty or property without due process of law.

As Plaintiff, in his brief, describes the incident out of which this action arose, he was engaged in an argument with two other inmates in the course of which he struck one with a shovel. He states that he refused to explain his action or to discuss the incident with the investigating prison authorities, as a result of which he was placed in solitary confinement for a period of fifteen days. Plaintiff says he is 66 years of age and has a foot disability discernable by X-ray for which he was awarded compensation in a hearing before the Illinois Industrial Commission. He found solitary confinement with its attendant rigorous conditions particularly onerous, and he considers it to be cruel and unusual punishment improperly imposed without a court trial. He was also classified as "C" under the Progressive Merit System, which he explains in his Complaint indicated unsatisfactory behavior and entailed a loss of privileges such as commissary rights and the right to earn "merit time."

The Defendants moved to dismiss the Complaint for failure to state a cause of action on which relief might be granted. The District Judge granted this motion and appeal followed.

State prison officials are vested with wide discretion, and discipline reasonably maintained in state prisons is not subject to our supervisory direction.

Apart from purely conclusory statements, the allegations of Plaintiff's Complaint do not show that the Defendants acting under color of state law or in conspiracy abridged his Constitutional rights, privileges or immunities within the scope of the Civil Rights statutes on which he relies. Cf *Henderson* v. *Pate*, 7 Cir., 1969, 409 F. 2d 507, 508, cert. den. 396 U.S. 914.

The decision of the District Judge is affirmed.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Before Hon. WIN G. KNOCH, Senior Circuit Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. ROBERT A. GRANT, District Judge

No. 17511

FRANCIS HAINES, PLAINTIFF-APPELLANT

vs.

OTTO J. KERNER, Former Governor, State of Illinois, etc., ET AL., DEFENDANTS-APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ILLINOIS

JUDGMENT—May 25, 1970

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Illinois, and was submitted to the Court without oral argument.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before Hon. WIN G. KNOCH, Sr. Circuit Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. ROBERT A. GRANT, District Judge

No. 17511

FRANCIS HAINES, PLAINTIFF-APPELLANT

vs.

OTTO J. KERNER, Former Governor, State of Illinois, ET AL., DEFENDANTS-APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ILLINOIS

ORDER DENYING REHEARING—June 19, 1970

On consderation of the petition for rehearing and suggestion that it be heard *en banc* filed in the above-entitled cause, no judge in active service having requested a vote thereon, nor any judge voted to grant the suggestion, and all members of the panel having voted to deny a rehearing,

IT IS ORDERED that the petition for a rehearing in the above-entitled cause be and the same is hereby denied.

SUPREME COURT OF THE UNITED STATES

No. 5940, October Term, 1970

FRANCIS HAINES, PETITIONER

v.

OTTO J. KERNER, Former Governor,
State of Illinois, ET AL.

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is orderd by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 8, 1971

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